

## **Part I Chapter 12 Real Estate Leases**

- A. General.** The policies, procedures and guidelines of this handbook do not apply to the solicitation and award of leases of real estate, including but not limited to leases of offices for use by Commonwealth employees.
- B. Space Requirements in Service Contracts.**
- 1. General Rule.** As a general rule, a solicitation or contract for services should not include a requirement for the contractor to provide space for use by the Commonwealth. When an agency needs office space for Commonwealth employees and Commonwealth equipment, it should contact the Department of General Services' Bureau of Real Estate, which will act as agent for the agency in soliciting lease proposals and entering into a lease agreement.
  - 2. Exception.** On rare occasions, the Commonwealth may want to include in a services contract the requirement for the contractor to provide space for the convenience and efficiency of the contractor and the Commonwealth. In such circumstances:
    - a.** The use of the space cannot be for the primary benefit of housing the Commonwealth employees.
    - b.** The contract cannot create a lease, which vests the Commonwealth with a real estate interest in the property. The services contract can give the Commonwealth a license to use the space, which is a personal property right.
    - c.** The contractor's cost for providing the space must be included in the payment made by the Commonwealth agency for the services and cannot be separated out and characterized as "rent". Terms such as "tenant", "lessee", "lessor", and "leased space" should not be used in the contract.
    - d.** The use of the contractor's space by the Commonwealth employees is primarily for the benefit and convenience of the contractor enabling it to more efficiently deliver the service the contractor has contracted to provide, although Commonwealth employee travel time can also be considered.
    - e.** An example of a permitted use is a contract where the contractor provides training for Commonwealth employees at its premises and the Commonwealth employees occupy those premises while receiving training. Similarly, the use of contractor space is permissible when a contractor is developing an IT system for an agency and the agency employees occupy the contractor's premises to provide input into the development and approval of the system so that it satisfactorily meets the needs of the agency.
    - f.** When an agency wants to include space requirements in a solicitation document (IFB, RFP, RFQ) or in a procurement contract, it must

submit a written request along with justification to the DGS Bureau of Procurement with a copy to the DGS Procurement Legal Unit. DGS will review and approve/disapprove the request. The solicitation document cannot be issued and no contract can be signed until DGS has approved the inclusion of the space requirements.

### C. Agency Construction in Leased Facilities.

1. **General.** The *Commonwealth Procurement Code, 62 Pa. C.S. Sections 101 et. seq.* and this handbook cover construction procurement by agencies regardless of whether the construction is for a Commonwealth-owned facility or a leased facility. Construction is defined as: "The process of building, altering, repairing, improving, or demolishing any public structure or building or other public improvements of any kind to any public real property." "Public structures, public buildings, public improvements, and public real property" is not restricted to Commonwealth-owned structures, buildings, improvements, or real property. Therefore, in those instances where an agency, and not the landlord, undertakes construction activities at a leased facility, it must follow the requirements and procedures of *Commonwealth Procurement Code, 62 Pa, C.S. Sections 101 et. seq.* and Part IV of this handbook.
2. **Landlord's Permission.** In every case where leasehold construction improvements are desired by an agency in a leased facility, the agency must first follow [Management Directive 625.6, Leasehold Improvements](#) and obtain the landlord's written consent before contracting for the construction.
3. **Requirements and Procedures.** After obtaining the landlord's consent for the agency to make the leasehold construction improvements, the agency should follow the procedures in Part IV, Procurement of Design and Construction Services. For those leasehold construction improvements where the landlord requires the use of a specific contractor, the agency should follow the procedures in Chapter 05 of Part IV (sole source). The sole source justification must include a copy of the provisions of the lease requiring the use of landlord-specified contractors or a written, signed statement from the landlord stating this requirement. The terms, conditions, and the specifications of the construction should be included as part of the contract.

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### References:

1. [Management Directive 625.6, Leasehold Improvements](#)